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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/200,495	11/25/1998	PETER C. VAN BUSKIRK	2771-337(PC8)	4898

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INTELLECTUAL PROPERTY / TECHNOLOGY LAW
PO BOX 14329
RESEARCH TRIANGLE PARK, NC 27709

EXAMINER

HU, SHOUXIANG

ART UNIT PAPER NUMBER

2811

DATE MAILED: 12/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/200,495

Applicant(s)

VAN BUSKIRK ET AL.

Examiner

Shouxiang Hu

Art Unit

2811

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 December 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 40-55 and 61-63.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: Also see the attached Office Action

Shouxiang Hu
TC 2800
12/23/02

09/200,495

Continuation of 2. NOTE: New limitations such as "unannealed" in the amended claims would require further search and/or consideration.

DETAILED ACTION

Response to Request for the Withdrawal of the Finality

1. Applicant's request (in Paper No. 24) for reconsideration of the finality of the last Office action is acknowledged. The request is on the grounds/arguments that: (A) four new references have been cited; (B) the Office did not reply to amendment C (Paper No. 14) filed by applicant in response to July 24, 2001 Office Action (Paper No. 12), and Office response to such amendment should be provided in the February 5, 2002 Office Action (Paper No. 15); and (C) the rejection under 35 U.S.C 112, 1st paragraph was made the first time and at the late date. This is not found persuasive because as explained below.

In response to applicant's arguments A-C above, it is noted that amendment C (Paper No. 14) filed by applicant on November 27, 2001 amended the claims after the Office Action of non-final rejection (Paper No. 12) sent out on July 24, 2001. Such amendment of the claims necessitated the new ground(s) of rejection presented in the Office Action (Paper No. 22) of final rejection. The Finality of the Office action of Paper No. 22 is deemed proper, because that, according to MPEP § 706.07(a), "Under present practice, second or **any subsequent actions** (emphasized by the examiner) on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)".

Regarding above arguments B and C, it is further noted that amendment C (Paper No. 14) filed by applicant incorporated unsupported subject matters into the claims, which misled the examiner and resulted in the Office Action of Paper No. 15 (February 5, 2002). Because of the misleading amendment and arguments in amendment C, the examiner has spent over 25 office hours without any credits (in the PTO production counting system) on the Office Action of Paper No. 15 responding amendment C, along with the subsequent Office Actions.

In addition, it is noted that both amendments C (Paper No. 14, 11/27/01) and D (Paper No. 17, 5/06/02) by applicant along with the arguments therein have been fully responded in the Office Action of final rejection in Paper No. 22, (9/30/02; see both the claim-rejection sections and the response-to-arguments section).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shouxiang Hu whose telephone number is (703) 306-5729. The examiner can normally be reached on Monday through Thursday, 7:30 AM to 6:00 PM.

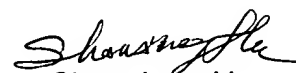
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Thomas can be reached on (703) 308-2772. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

SH

December 23, 2002


Shouxiang Hu
Patent Examiner
TC2800